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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/516,532

06/13/2005

Malcolm John Menday

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EXAMINER

HESS, DOUGLAS A

ART UNIT

PAPER NUMBER

3651

MAIL DATE

DELIVERY MODE

02/19/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/516,532	<b>Applicant(s)</b> MENDAY ET AL.	
	<b>Examiner</b> Douglas A. Hess	<b>Art Unit</b> 3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13, 15-24, 27, 28, 30 and 31 is/are pending in the application.
- 4a) Of the above claim(s) 5-13, 15-24, 27, 28 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/21/2007</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### **RESTRICTION**

1. Newly submitted claims 5-13, 15-24, 27, and 28 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The amendment to the claims listed above do not bring the claims back into consideration since these amendments add features that echo the original restriction requirement of February 14, 2006. The elected invention is the carrier only, not the combination of any of the other previously restricted claims. A carrier tube is the invention in which an Office Action follows.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 5-13, 15-24, 27, and 28 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### **DETAILED ACTION**

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

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evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-3 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irish USP 4,324,511 in view of Cedergren USP 4,273,478.

Irish teaches a cylindrical tube carrier 35, a lid 26 with an aperture 45 at one end of the carrier, a base 30 removably mounted to a second end allowing access to the carrier when the base is moved. Irish fails to disclose a lock for retaining the base in place. Cedergren teaches a tube carrier 10, with a locking base 16, 24, 28 at one end. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a locking base in lieu of/or as an addition to the lid 26 of Irish, since it is known to use locks to provide a level of security to prevent unwanted access to a tube carrier. RE claim 31, whether a one or a well know dual key lock does not further distinguish a patentable departure.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Irish in view of Cedergren as outlined above and further in view of Wuthrich USP 4,470,730.

Irish in view of Cedergren teaches every claimed feature except for a manual shutter mechanism for opening and closing the aperture on the carrier. Wuthrich teaches a door/shutter with manual opening and closing means 18 in order to access the inside 15 of his carrier tube. It

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would have been obvious to one of ordinary skill in the art at the time the invention was made to provide an aperture with a shutter as shown by Wuthrich (as one example of a door for a carrier tube) since carrier tubes are well known and a simple shutter mechanism is not a patentable departure over the above references as opening and closing shutters come in many shapes and forms. The claimed shutter mechanism is only **adapted to move between an open and closed position which is exactly what the shutter of Wuthrich does.**

### *Conclusion*

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Douglas A. Hess whose telephone number is 571-272-6915. The examiner can normally be reached on M-Thurs 5:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on 571-272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Douglas A Hess/  
Primary Examiner, Art Unit 3651

Douglas A Hess  
Primary Examiner  
Art Unit 3651

DAH  
February 13, 2008